IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9204 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

YUSUFKHAN @ TALWAR RAHIMKHAN PATHAN

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 9204 of 2001

MR HR PRAJAPATI for Petitioner No. 1

MR DP JOSHI, AGP, for Respondents No. 1-3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 30/01/2002

1. Commissioner of Police, Surat City, Ahmedabad, passed an order on the 14th September, 2001, in exercise of powers under Section 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short), and detained the petitioner on the 16th September, 2001, under the provisions of the said Act.

2. The detaining authority took into consideration five offences registered against the petitioner, so also the statements of two anonymous witnesses. The detaining authority considered the activities of the detenu as that of a dangerous person as defined under the PASA Act and observed that the petitioner is required to be immediately prevented from pursuing his activities, which are detrimental to public order. The authority also considered the possibility of resorting to less drastic remedies and came to conclusion that detention under PASA Act is the only remedy that can be resorted to.

3. The petitioner challenges the order of detention on various grounds. Mr. Prajapati, learned advocate appearing for the petitioner, has restricted his arguments to the ground that there is improper exercise of powers under Section 9(2) of the PASA Act. He has drawn attention of this Court to the fact that the statements of anonymous witnesses were verified on the 13th September, 2001 and the order detention was passed on the 14th September, 2001. The authority, therefore, had no time to undertake the exercise of verifying the correctness and genuineness of the fear expressed by the witnesses qua the detenu. Mr. Prajapati submitted further that the offences registered against the detenu do not indicate any disturbance to public order and, therefore, the subjective satisfaction recorded by the detaining authority regarding the activities of the detenu being detrimental to public order is without any basis and the petition may, therefore, be allowed.

4. Mr. Joshi, learned Assistant Government Pleader, has opposed this petition.

5. Considering rival side contentions, it appears that the statements of anonymous witnesses have been recorded on the 16th and the 18th August, 2001. The same have been verified by the detaining authority on the 13th September, 2001 and the order is passed on the 14th September, 2001. So far as the statements of anonymous witnesses are concerned, it may be noted that the detaining authority has observed that the fear expressed by the witnesses and the statements and the statements are correct and genuine. Barring this statement in the grounds of detention, there appears nothing to indicate an exercise having been undertaken by the detaining authority for verifying correctness and genuineness of the statements and the fear expressed by the witnesses. The detaining authority has to take into consideration the background, the antecedents, the character, etc. of

the detenu while considering the need for exercise of powers under Section 9(2) of the PASA Act. The authority has to scale the right of the detenu of making an effective representation on the one hand and the public interest on the other and has to strike a balance between the two. The detaining authority has not filed any affidavit nor is there any contemporaneous material to indicate undertaking of such exercise by the detaining authority and, therefore, the exercise of powers under Section 9(2) of the PASA Act can be taken to have vitiated. No reliance, therefore, can be placed on these statements for sustaining the order of detention. There is improper exercise of powers under Section 9(2), as there is no material to indicate the exercise as stated above (Bai Amina v. State of Gujarat & Ors., 1981 GLR 1186 and Kalidas Chandubhai Kahar v. State of Gujarat & Ors., 1993(2) GLR 1659).

6. Adverting to the offences registered against the detenu, a perusal of the First Information Report and the other relevant documents supplied to the detenu makes it abundantly clear that they relate to theft cases and there was no disturbance to public order. All that was involved was a law and order situation. Resultantly, the satisfaction arrived at by the detaining authority about the activities of the detenu being detrimental to public order is without any basis. Neither the statements nor the registered offences an be accepted to form the basis of this satisfaction.

7. In view of the above discussion, the reliance placed on by the detaining authority on the statements of anonymous witnesses and the registered offences cannot be upheld. The order of detention as well as the continued detention both are rendered bad in law. The petition, therefore, deserves to be allowed.

7. In the result, the petition is allowed. The impugned order of detention dated the 14th September, 2001, passed against the detenu is hereby quashed. The detenu-Yusufkhan @ Talwar Rahimkhan Pathan is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no orders as to costs.

8. Direct service is permitted.

[A.L. DAVE, J.]

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